

WETLANDS COUNCIL

MINUTES

April 12, 2016

The Wetlands Council met on Tuesday, April 12, 2016 in Rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Carol Henderson, James Kennedy, Deborah Lievens, Richard Mellor, Russ St. Pierre, Susan Slack, and Bob Wolff

Absentees: Councilor: Ryan Crosbie, Seth Prescott, and Robert Snelling

Also present were: Paula Scott, Appeals Clerk and Carolyn Guerdet, Council Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball 8:00 a.m. with introductions and a quorum present.

Council went into executive session at 8:02 a.m. Regular meeting resumed at 8:28 a.m.

1. **Approval of Minutes**

- ***Councilor Henderson made a motion to accept the February 9, 2016 minutes as written, second by Councilor Lievens. Motion passed unanimously.***

2. **Public Input:** None

3. **Status Report**

I. New Appeals

Docket No. 15-15 WtC – Linda J. Giannetta, Trustee Appeal

Subject: 11/25/15 denial of permit, File #2015-01500

Hearing Officer: Not assigned

Status: December 22, 2015 received Notice of Appeal. 12/23/15 issued Insufficient Appeal letter. January 14, 2016 received revised Notice of Appeal. 1/15/16 issued receipt of Appeal letter. Council to accept or dismiss at their April 12, 2016.

- ***Councilor Henderson made a motion to accept the Appeal, second by Councilor Slack. Motion passed unanimously.***

Docket No. 16-04 WtC – Maria Giakoumakis and Paul Foden Appeal

Subject: 02/17/16 Letter from AG regarding Grandfather Status

Hearing Officer: Not assigned

Status: March 10, 2016 received Petition for Appeal. 3/18/16 received Motion to Summarily Dispose of Appeal. 3/23/16 issued receipt of Appeal letter. 3/29/16 received Appearance for Atty. Aslin and the State's Motion to Summarily Dismiss. Council to accept or dismiss at their April 12, 2016 meeting.

- ***Councilor St. Pierre made a motion to accept the Appeal limited to the clarifying letter of February 17, 2016, second by Councilor Henderson. Motion passed unanimously.***

II. Decisions that need to be written/finalized and issued.

Docket No. 14-16 WtC – David and Louise Drolet, et al. Appeal

Subject: 11/10/14 permit approval #2014-00246 issued to Green and Company

Hearing Officer: David Conley, Esq. appointed by AG on 3/13/15

Status: 12/10/14 received Notice of Appeal. 12/11/14 issued insufficient appeal letter. 12/24/14 received Amended Notice of Appeal. 12/30/14 issued receipt of appeal letter. Council accepted the appeal at the February 10, 2015 meeting. 2/11/15 issued Appeal accepted letter. 2/20/15 received Appearance from Ari Pollack for permittee. April 17, 2015 issued Notice of scheduled PHC for 4/24/15 at 9 a.m. 4/17/15 received Appearance for Collis Adams. 4/22/15 received Assented-To Motion to Continue. 4/23/15 issued letter granting Motion and rescheduling PHC for 5/13/15 at 11:30 a.m. May 13, 2015 issued Pre-hearing Order scheduling hearing for September 8, 2015 at 9 a.m. 5/15/15 issued Ruling on Validity of Permit Condition. August 6, 2015 received Permit Holder's Witness and exhibit List. 8/13/16 received Assented-To Motion to Continue Final Hearing and Continue Hearing and rescheduling hearing for November 10, 2015 at 9 a.m. 8/20/15 received Partial Objection to Permit Holder's Motion in Limine. 9/25/15 issued Order on Permit Holder's Motion in Limine. October 19, 2015 received Motion to Continue. 10/21/15 received Objection to Appellant's Motion to Continue Hearing. 10/26/15 issued letter granting Motion to Continue and rescheduling hearing for February 9, 2016 at 9 a.m. November 24, 2015 received Appellant's Witness and Exhibit List. Hearing was held February 9, 2016 and deliberations were held on 2/16/16. Hearing Officer to issue decision within 90 days(5/16/16).

Docket No. 15-02 WtC(PNA) – Janette and Allen Richardson Appeal

Subject: 3/3/15 approval of permit #2015-00336 issued to Loren B. McCabe 2002 Trust

Hearing Officer: David Conley, Esq. appointed by AG on 5/14/15

Status: 9/1/15 issued order on Assented to Request to Remand. Docket now closed. April 1, 2016 received Notice that the Appeal has been Resolved.

Docket No. 15-17 WtC – Rene Montplaisir and Barbara Fraser Appeal

Subject: 11/10/15 amended Administrative Order No. 11-037 WD

Hearing Officer: Not assigned

Status: 12/31/15 received Notice of Appeal. 1/5/16 issued receipt of Appeal letter. The Appeal appears to be untimely filed. 1/8/16 received Appearance from Atty. Brooks and Motion to Dismiss. 1/8/16 received Objection to Motion to Dismiss. Council to Accept or dismiss at their February 9, 2016 meeting. Council denied the Appeal at the February 9, 2016 meeting. 2/12/16 issued ruling on Acceptance of Appeal and Motion to Dismiss. 3/11/16 received Petition for Rehearing, Motion to Amend Appeal and Waive Rule and Appeal of the Amended Administrative Order dated November 10, 2015. March 18, 2016 received Objection to Motion for Rehearing, Motion to Amend Appeal and Waive Rule, and Motion to Dismiss the Appeal of Amended Administrative Order. 3/28/16 received Objection to Motion to Dismiss. Council to act on motions and objections.

- ***Councilor St. Pierre made a motion to deny the Petition for Rehearing, second by Councilor Lievens. Motion passed unanimously.***

III. Hearings or PHCs Pending

Docket No. 15-06 WtC – James and Carol Rust Revocable Trust Appeal

Subject: 4/15/15 denial of permit application #2014-01571

Hearing Officer: David Conley, Esq. appointed by AG on 9/14/15

Actions: May 14, 2015 received Preliminary Notice of Appeal(PNA). June 9, 2015 received Notice of Appeal. 6/10/15 issued receipt of Appeal letter. Council accepted appeal at their September 8, 2015 meeting. 9/10/15 issued appeal accepted letter. 9/24/15 issued Notice of PHC scheduled for 10/19/15 at 9:30 a.m. October 13, 2015 received Appearance of Collis Adams. 10/19/15 issued Pre-Hearing Order with 2nd PHC scheduled for November 4, 2015 at 9 a.m. 11/4/15 issued 2nd Pre-Hearing Order with 3rd PHC scheduled for December 14, 2015 at 9 a.m. 12/14/15 issued Pre-hearing Order scheduling a 4th PHC for January 11, 2016 at 1:30 p.m. 1/11/16 issued Pre-Hearing Order scheduling a final PHC for 4/11/16 at 9 a.m. and the hearing for May 10, 2016 at 9 a.m. April 1, 2016 received Withdrawal of Appeal. Docket now closed.

Docket No. 15-10 WtC – Christopher John Krochina Appeal

Subject: 5/11/15 approval of permit #2015-00158 issued to Barbara Ann and Ronald Coburn

Hearing Officer: David Conley, Esq. appointed by AG on 9/14/15

Actions: June 10, 2015 received Petition for Appeal. 6/11/15 issued insufficient appeal letter. July 10, 2015 received Amendment to Petition for Appeal. 7/13/15 issued receipt of Amendment to Petition for Appeal. Not sure of timeliness, depends on what date the Council decides is the date of issuance. Date of Decision (May 9, 2015) or cover letter (May 11, 2015). Council accepted appeal at their September 8, 2015 meeting. 9/10/15 issued appeal accepted letter. 9/25/15 issued Notice of PHC scheduled for 10/19/15 at 10:30 a.m. October 13, 2015 received Appearance of Darlene Forst. 10/15/15 received Appearance of Nicol Roseberry for the permittee. 10/15/15 issued Notice of Rescheduled PHC to November 2, 2015 at 9 a.m. 10/15/15 received Corrected Appearance of Nicol Roseberry. 10/15/15 received Appearance for Ronald Coburn, permittee. 10/26/15 received Appearance of Atty. Christopher Boldt for the permittees. 10/30/15 received Motion to Continue. November 2, 2015 issued Pre-Hearing Order with Hearing scheduled for April 12, 2016 at 9 a.m. 11/16/15 received Motion to Dismiss. 11/23/15 received Objection to Motion to Dismiss. December 23, 2015 issued letter denying Motion to Dismiss. 12/23/15 issued notice of 2nd Pre-hearing Conference scheduled for February 8, 2016 at 10:30. 12/23/15 issued ruling on Appellant's Objection to Motion to Dismiss. 2/8/16 issued 2nd Pre-hearing Order scheduling a hearing on standing for April 12, 2016 and a hearing on merits for May 10, 2016 if needed. 2/11/16 received Exhibit A of Motion to Dismiss. 2/16/16 received Appellant's Motion to Limine. 2/22/16 received Intervenor's Objection to Appellant's Motion in Limine. 2/29/16 received Appellant's Motion to Strike the Coburn's Motion to Dismiss and Exhibit A. March 2, 2016 received Intervenor's Objection to Appellant's Motion to Strike. 3/22/16 received Intervenor's Witness and Exhibit List. 3/23/16 received Appellant's Witness and Exhibit List and Motion for Summary Judgment as to Appellant's Standing. 3/31/16 received Intervenor's Objection to Appellant's Motion for Summary Judgment and Witness and Exhibit list. 4/4/16 issued Orders on Pre-hearing Motions. 4/5/16 issued letter regarding order on Intervenor's Objection to Appellant's witness and Exhibit List. 4/8/16 received Appellant's Witness and Exhibit List.

Docket No. 15-12 WtC – N. Miles Cook III Appeal

Subject: 10/9/15 denial of permit application #2015-00960

Hearing Officer: David Conley, Esq. appointed by AG on 2/22/16

Status: November 5, 2015 received Petition for Appeal. 11/9/15 issued receipt of Appeal letter. 11/20/15 received Appearance from Atty. Maloney for DES. Council to accept or dismiss at their February 9, 2016 meeting. Appeal was accepted at the February 9, 2016 Council meeting. 2/23/16 issued Appeal accepted letter. 2/25/16 issued notice of Pre-hearing Conference schedule for 3/28/16 at 9:30 a.m. 3/28/16 issued Pre-hearing Order scheduling hearing for June 14, 2016 at 9 a.m.

Docket No. 15-13 WtC – John and Toby Heisey Appeal

Subject: 10/23/15 amendment approval of permit #2012-01642

Hearing Officer: David Conley, Esq. appointed by AG on 2/22/16

Status: November 12, 2015 received Petition for Appeal. 11/13/15 received Supplement to Certificate of Service and issued receipt of Appeal letter. 11/19/15 received Appearance from Atty. Pollack for the permittee. 11/23/15 received Appearance from Collis Adams. Council to accept or dismiss Appeal at their February 9, 2016 meeting. Chairman Kimball asked Appeals Clerk, Paula Scott, to first give a timeline of the old appeals. Appeal was accepted at the February 9, 2016 Council meeting. 2/23/16 issued Appeal accepted letter. 2/25/16 issued Notice of Pre-hearing Conference schedule for 3/28/16 at 10:30 a.m. 3/14/16 received Motion for Continuance. 3/15/16 issued letter granting Motion for Continuance and rescheduled PHC for April 11, 2016 at 9:30 a.m. 3/21/16 received Assented to Motion for Continuance. 3/28/16 issued letter granting the Assented to Motion for Continuance and rescheduled PHC for May 9, 2016.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

Docket No. 14-12 WtC – Susan and Mark Hilbert Appeal

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 28, 2014 received Notice of Appeal. 7/30/14 issued insufficient appeal letter. August 8, 2014 received revised Notice of Appeal. 8/11/14 issued receipt of Revised Notice of Appeal. Council accepted appeal

at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/27/14 issued Prehearing Order staying the appeal pending the outcome of the Superior Court Quiet Title action.

Docket No. 14-13 WtC – Ergendino Perrone and Robert Gleason Appeal

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 30, 2014 received Notice of Appeal. 7/31/14 issued receipt of appeal letter. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/21/14 received Assented-To Motion to Stay Proceedings. 10/22/14 issued letter granting Motion to Stay Proceedings. July 1, 2015 received appellant's Withdrawal of Counsel Philip Braley. 7/6/15 received appellant's withdrawal of counsel Cooley Arroyo.

Docket No. 14-14 WtC – Jeffrey Norton et al. Appeal

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 30, 2014 received Notice of Appeal. 7/31/14 issued insufficient appeal letter. August 6, 2014 received revised Notice of Appeal. 8/7/14 issued receipt of Revised Notice of Appeal. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/22/14 received Assented-To Motion to Stay. 10/23/14 issued letter granting Motion to Stay.

V. Misc.

4. New Business

Michele Bubier, Wetlands Mitigation Program, gave an update of a proposal for the oyster reef restoration in Great Bay. They are asking to move the location from Greenland to Newington, shifting it about 2000 ft. east and into a new town. The contract is going to Governor and Council. No change in funding.

- ***Councilor Slack made a motion stating the Council approves revision of the location of the oyster restoration, second by Councilor Lievens. Motion passed unanimously.***

She also noted a change in a 2014 project – Falls Brook in Swansey. An undersized culvert is being replaced with a bridge structure. The contractors have asked for \$50,000 for changes in construction costs. The site section committee suggests the funding be approved and start of construction will be in June or July. This will come out of the 2016 unused funds. Original project was \$175,000 and now will be \$225,000. It is within the standard of practice change.

- ***Councilor Slack made a motion to approve, second by Councilor Henderson. Motion passed unanimously with Councilor Mellor abstaining.***

5. Old Business

6. Next Meetings –

May 10, 2016 at 8:30 a.m. with possible hearing at 9:00.

7. Adjournment

- ***Councilor St. Lievens made a motion to adjourn, second by Councilor St. Pierre. Motion passed unanimously.***

Meeting adjourned at 9:13 a.m.

WETLANDS COUNCIL

HEARING MINUTES

April 12, 2016

The Wetlands Council met for
Docket No. 15-10 WtC – Christopher John Krochina Appeal Hearing
Tuesday, April 12, 2016 in Rooms 112, 113, & 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Councilors:, Carol Henderson, James Kennedy, Chairman Chip Kimball, Deborah Lievens, Richard Mellor, Russ St. Pierre, Susan Slack and Robert Wolff

Absentees: Councilors: Ryan Crosbie, Seth Prescott, and Robert Snelling

Also present was: Paula Scott, Appeals Clerk

The Hearing was called to order by Hearings Officer David Conley at 9:45 a.m.

The Hearing closed at 12:58 p.m.

Deliberations started at 1:35 p.m. and ended at 2:10 p.m.
